IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

A.O. No. 361 of 2004

Date of decision : 27th February, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date 27.2.2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 361 of 2004

The New India Assurance Company Ltd.
through its Divisional Manager,
Opposite Judge Court,
Haldwani (Nainital) …Appellant

Versus

1. Smt. Meera Devi
   w/o late Devi Prasad,
   r/o Gali No. 5, Rampur Road,
   Haldwani (Nainital)
2. Smt. Hemanti Devi
   W/o Shyam Sunder Pandey
   R/o Boragate,
   Post Office Tanakpur,
   District Champawat.

…… Respondents

Mr. M.K.Agrawal, Advocate holding brief of Mr. R.B. Agarwal, Adv. for the Appellant.
None for the respondents.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. P.C.Pant, J.

Rajeev Gupta,C.J. (Oral)

Mr. M.K.Agrawal, Advocate holding brief of Mr.R.B. Agarwal, Advocate for the Appellant.
None for the respondents.

2. This is insurer's appeal under Section 30 of the Workmen's Compensation Act, 1923 against the Award dated 16.08.2004 passed by Commissioner for Workmen Compensation and Assistant Labour Commissioner, Haldwani (Nainital) in W.C.C. No. 56 of 2003.

3. The respondents/claimants claimed compensation of Rs.4,27,140/- for the death of Rajesh Kumar alias Boby, who was working as Cleaner on truck no. UPE 6269 and died on 03.06.2003 on account of the injuries sustained by him during the course of his employment when the said truck dashed with other Tanker no. PB 11-1479. The claimants further

pleaded that the deceased Rajesh Kumar alias Boby was getting salary of Rs. 3500/- and allowance of Rs. 1000/- per month.

4. Respondent no. 1 in the claim petition i.e. the employer admitted that deceased Rajesh Kumar alias Boby was in her employment as Cleaner and he died during the course of his employment in the accident. The insurer denied the factual averments made in the claim petition but admitted the fact that the truck no. UPE 6269 was insured with them.

5. The Commissioner for Workmen Compensation on the evidence led by the parties held that Rajesh Kumar alias Boby was working as a Cleaner on truck no. UPE 6269; he died on account of the injuries sustained by him in the accident on 03.06.2003; that his death was during the course of his employment; and the insurance company was liable to pay compensation to the claimants. Finding the evidence led by the claimants about the income of the deceased unreliable, the Commissioner assessed his income at Rs. 2105/- per month on the basis of the minimum wages as per Government Order at the relevant time. As the age of the deceased was 27 years at the time of the accident, the Commissioner for Workmen Compensation assessed the compensation at Rs. 2,24,782/- The Commissioner also awarded interest @ 12 % per annum on the amount of compensation.

6. The sole ground pressed into service in this appeal filed at the behest of the Insurance Company is that the Commissioner for Workmen Compensation has erred in saddling the liability of interest also on the Insurance Company. The learned counsel further submitted that the Commissioner has erred in awarding the interest @ 12 % per annum.

7. So far as the liability of the insurance Company to pay the interest on the amount of compensation is concerned, we need not dilate much on the issue in view of the dictum of the Apex Court in the case of L.R. Ferro Alloys Ltd. Vs. Mahavir Mahto and another reported in (2002) 9 SCC 450 wherein it has been categorically held in para 5 that the

Compensation with interest is payable by the Insurance Company, but not the penalty. Hence, we do not find any substance in the first submission made on behalf of the appellant that the Insurance Company is not liable to pay interest on the compensation.

8. As regards the second submission about the rate of interest on the amount of compensation, we deem it proper to reproduce Section 4A of the Workmen's Compensation Act, which reads as follows:

> **"4A. Compensation to be paid when due and penalty for default- (1)** Compensation under section 4 shall be paid as soon as it falls due.
>
> (2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.
>
> (3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-
>
> (a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and
>
> (b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears, and interest thereon pay a further sum not exceeding fifty per cent of such amount by way of penalty:
>
> Provided that an order for the payment of penalty shall not be passed under clause (b) without giving as reasonable opportunity to the employer to show cause why it should not be passed."

9. A bare perusal of Clause (a) of Sub-Section 3 makes it clear that interest ordinarily has to be @ 12 %, but if ordered it can be at a higher rate also, but the same should not exceed maximum of the lending rate

of any scheduled Bank. Thus in no case rate of interest can be less than @ 12 %.

10. Reliance of the learned counsel for the appellant on the Division Bench decision dated 05.04.2005 of this Court in the New India Assurance Company Ltd. Vs. Smt. Kusumlata and another does not take the appellant's case any further as the said judgment does not contain any reason whatsoever for reducing the rate of interest from 12% to 6% and the same being apparently against the express provision of law contained in Section 4A of the Workmen's Compensation Act, 1923 is per incurium.

12. For the foregoing reasons, the appeal filed by the insurance Company u/s 30 of the Workmen's Compensation Act, 1923 fails and is hereby dismissed. No order as to costs.

(P.C.Pant , J.) **(Rajeev Gupta, C.J.)**

27.02.2006
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